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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Report of the Independent Expert on human rights and international solidarity, Virginia Dandan

Addendum

Preliminary text of a draft declaration on the right of peoples and individuals to international solidarity*

Summary

The present report contains the preliminary text of a draft declaration on the right of peoples and individuals to international solidarity, in accordance with paragraph 14 of Human Rights Council resolution 23/12. The preliminary text was circulated via a note verbale to Member States and other relevant stakeholders in the last quarter of 2013, with a view to eliciting comments and inputs prior to finalizing the text of the draft declaration.

The Independent Expert expresses her deep gratitude to all the representatives of States, the individuals, groups, institutions and others who have supported and contributed to the consultation process. She looks forward to further collaboration with them in the process of finalizing the draft declaration.

* The summary of the present report is circulated in all the official languages. The report itself, contained in the annex to the summary, is circulated as received.

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Annex

[English only]

Report of the Independent Expert on human rights and international solidarity, Virginia Dandan

Preliminary text of a draft declaration on the right of peoples and individuals to international solidarity

I. Preambular Paragraphs

Recalling the Preamble of the Charter of the United Nations, in particular the determination by States to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small; to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained; to promote social progress and better standards of life in larger freedom; and to employ international machinery for the promotion of the economic and social advancement of all peoples,

Recognizing that there is an overwhelming collective manifestation of international solidarity by States as expressed in the multitude of commitments and promises relating to human rights and development that they have made most notably the adoption of the Universal Declaration of Human Rights in 1948, the Vienna Declaration and Programme of Action in 1993, the Declaration on the Right to Development in 1986 and the Millennium Declaration in 2000,

Recalling the recognition as set forth in the declaration adopted by the heads of State and Government at the Millennium Summit of the United Nations of the fundamental value of solidarity to international relations in the twenty-first century, stating that: global challenges must be managed in a way that distributes costs and burdens fairly, in accordance with basic principles of equity and social justice; those who benefit least, deserve help from those who benefit most; responsibility for managing worldwide economic and social development, as well as threats to international peace and security, must be shared among the nations of the world and should be exercised multilaterally;[1] in addition to their separate responsibilities to their individual societies, they have a collective responsibility to uphold the principles of human dignity, equality and equity at the global level; [2]as well as the resolve to create an environment – at the national and global levels alike – which is conducive to development and to the elimination of poverty,[3]

Recalling further that the World Conference on Human Rights where States adopted the Vienna Declaration and Programme of Action in June 1993, contains various references to notions of international cooperation and solidarity; thus, in the preamble, respect for the principles of "peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living, and solidarity" is cited and strengthened by the determination "to

[1] United Nations Millennium Declaration, UN Doc. A/55/49 (2000), para. 6.

[2] Ibid., para. 2.

[3] Ibid., para. 12.

take new steps forward in the commitment of the international community with a view to achieving substantial progress in human rights endeavours by an increased and sustained effort of international cooperation and solidarity,"

Considering that in development forums, States are increasingly developing consensus around the notion of mutual accountability,[4] described at the Busan High Level Forum on Aid Effectiveness as the need for accountability to the intended beneficiaries of our cooperation, as well as to our respective citizens, organizations, constituents and shareholders."[5]

Stressing that international solidarity is a fundamental conception of mutually reinforcing relations among persons, groups and nations; as an essential binding element that underpins global partnerships; a key approach to poverty eradication; and an indispensable component of the efforts to realize all human rights, including the right to development, and the Millennium Development Goals,

Affirming that international solidarity is not limited to international assistance and cooperation, aid, charity or humanitarian assistance; that it is a broader concept and principle that includes sustainability in international relations, especially international economic relations, the peaceful coexistence of all members of the international community, equal partnerships and the equitable sharing of benefits and burdens,[6]

Taking into account the repeated emphasis on the importance of cooperation by the General Assembly contained in its resolution 60/251 and in the preamble recognizing that "the promotion and protection of human rights should be based on the principles of cooperation and genuine dialogue and aimed at strengthening the capacity of Member States to comply with their human rights obligations for the benefit of all human beings",

Reiterating the commitment of States expressed in the last paragraph of the Millennium Declaration: "The United Nations is the indispensable common house of the entire human family, through which we will seek to realize our universal aspirations for peace, cooperation and development. We therefore pledge our unstinting support for these common objectives and our determination to achieve them."[7]

II. Preliminary Operational Paragraphs

Article 1

1. International solidarity is the union of interests, purposes and actions between and among peoples, individuals, States and their international organizations, to preserve the order and the very survival of international society, and to achieve common goals that require international cooperation and collective action based on the international normative system of obligations, duties and responsibilities, which they implement and practice to foster peace and security, development and human rights, in accordance with the Charter of the United Nations.

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[4] OHCHR & CESR. (2013) Who will be Accountable? Human Rights and the Post-2015 Development Agenda. New York and Geneva.

[5] See Busan Partnership for Effective Development Cooperation 2011 Outcome Document and the OECD-DAC "Action-oriented policy paper on human rights and development" at www.oecd.org.

[6] A/HRC/RES/18/5.

[7] Millennium Declaration, para. 32.

2. International solidarity is evident in the actions collectively undertaken by States, that have a positive impact on the exercise and enjoyment of human rights by peoples and individuals within and outside of their respective territories, particularly in matters pertaining *inter alia* to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

3. These actions include ratification by States of the United Nations international human rights treaties; the commitments, agreements and pledges adopted and agreed upon between and among States at the intergovernmental, regional and international levels; the measures and policies by each State in relation to its foreign relations including its actions within international organizations; and its domestic measures and policies that arise from, or that inform their international commitments.

4. International solidarity responds to the need for transformative change that encompasses the objectives of equity, sustainability, security and empowerment that are applicable to all countries, not only developing countries.

Article 2

1. Preventive solidarity aims at overcoming the root causes of poverty, inequality and gender imbalances, implying that States fully respect and comply with their obligations under international law, pledged at the United Nations.

2. Preventive solidarity is essential to the achievement of both intergenerational and intra-generational solidarity and is a vital component of the duty of State to provide and seek international cooperation for the purpose of assistance in the implementation of its human rights obligations, particularly for its most vulnerable and marginalized peoples and individuals.

Article 3

International solidarity is also evident in the actions across borders undertaken together by peoples and individuals, the former being interpreted to include groups, associations, organizations, civil society, and those that are not accommodated in dominant paradigms, but that share similar values and concerns and are structured in some way[8] such as those in:

(a) Local and grassroots communities, who are unrepresented in and isolated from, mainstream civil societies and organizations;

(b) Social spheres that transcend national borders such as transnational communities, and diaspora communities among others;

(c) Transnational advocacy networks including those that participate in domestic and international activities simultaneously, bound by shared values and discourses, and who engage in dense exchanges of information and services;[9] and,

(d) Virtual communities of differently situated individuals who are linked through the Internet and who together, consequently develop similar world views.

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[8] Newman, D. as cited in De Feyter, K. (2013) *Towards a Framework Convention on the Right to Development.* Geneva: Friedrich Ebert Stiftung.

[9] Keck, M. and K. Sikkink. (1998) *Activists Beyond Borders: Advocacy Networks in International Politics.* New York: Cornell University Press.

Article 4

As such, the general objective of international solidarity is to create an enabling environment where all human rights including the right to development, can be progressively realized for all peoples and individuals, through effective multilateral preventive solidarity measures undertaken by States and international organizations, in active partnerships with each other and with peoples and individuals who constitute the international society with a view to:

(a) Preventing and removing the root causes of the asymmetries and inequalities between developed and developing countries and populations, as well as the structural obstacles that generate poverty worldwide; and,

(b) Fostering the equitable, just and fair distribution of benefits in a globalized world through the protection and promotion of all human rights.

Article 5

The right to international solidarity encompasses and bears upon:

(a) The fulfilment of the purposes and principles of the Charter of the United Nations in the true spirit of oneness and harmony;

(b) Adherence to the principles of justice, equity, peaceful coexistence, non-interference, self-determination, mutual respect and accountability in international relations;

(c) The right to development as a common concern of humanity to be realized based on partnerships and the mutual recognition of responsibility and accountability of all partners;

(d) Equitable, just and fair partnerships of States as the basis of international cooperation with regard to international assistance, official development aid, and other international cooperation agreements in the contemporary circumstances of globalization and growing interdependence;

(e) The permanent sovereignty of each State over its own natural wealth and resources;

(f) The right and the responsibility of each State and its peoples to determine freely their own objectives of social development, to set their own priorities and to decide, in conformity with the principles of the Charter of the United nations, the means and methods of their achievement, without any external interference;[10]

(g) The responsibilities of the multiple non-State actors in the development process;

(h) The primary responsibility of States in meeting their respective national human rights obligations as well as the extraterritorial obligations jointly shared with other States;

(i) The accountability of all States to their peoples with regard to the implementation of their foreign policy, bilateral, regional and international agreements and partnerships;

[10] See A/HRC/21/66. (2012) Final paper on human rights and international solidarity. para. 22(e).

(j) The accountability of all States before international structures and mechanisms such as, *inter alia*, the Universal Periodic Review and the United Nations human rights treaty bodies, and the supporting national policies aiming to respect, protect, promote, and fulfil human rights, including respect for cultural diversity and the right to peace;

(k) Good practices of collective action on the ground – whether among individuals, peoples or States – that give rise to desirable outcomes in advancing the respect for, protection and fulfilment of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion;

(l) The achievement of gender equality in all sustainable development initiatives, including in areas related to climate change, water management, renewable energy generation, access to resources, services, social protection, education and markets;

(i) The structural analysis and consequent dismantling of the root causes that perpetuate discrimination against women resulting in poverty and in the violation of women's human rights;

(j) Global partnerships aimed at achieving the United Nations Development Agenda before and beyond 2015.

Article 6

1. The right to international solidarity is a fundamental human right which peoples and individuals have the freedom to enjoy, on the basis of equality and non-discrimination, the benefits of a harmonious international society with a just and fair international political and economic order, in which all human rights and fundamental freedoms may be fully realized.[11]

2. Everyone holds in common the birthright of human rights that link peoples and individuals together in solidarity, across cultural diversities and variations in language, religion, national or social origin, property, birth or other status, and therefore entitles everyone to the freedom to exercise and enjoy the right of peoples and individuals to international solidarity, and to participate and contribute to its full realization in accordance with applicable international human rights standards.

3. The right of peoples and individuals to international solidarity draws on the human rights norms and principles already codified in international legal instruments reflecting core economic, social and cultural rights as well as civil and political rights, and the right to development.

4. The right of peoples and individuals to international solidarity therefore consists of their entitlements along with the obligations of States that are well-established in international human rights treaties, with the addition of common but differentiated responsibilities arising from interactions in the various relevant fields at the national, regional and international level.

5. The right to international solidarity guarantees that peoples and individuals should benefit from the fulfilment of commitments, agreements and pledges arranged and agreed upon between and among States at the bilateral, intergovernmental, regional and international levels.

[11] Ibid. para. 7.

Article 7

Peoples and individuals have the right, individually and in association with others within their territories and beyond national boundaries, and as provided for in human rights and other applicable international instruments:

(a) To seek, obtain, receive and impart to others, information about their right to international solidarity, and to have access to knowledge about how this right and its related freedoms, are given effect in domestic and international legislative, judicial or administrative systems;

(b) To establish political spaces domestically or transnationally, in which actors in different situations and locations can peacefully share and disseminate information, interact with each other, negotiate and undertake—formally or informally—their social, cultural, and political interests, in order to foster the respect, protection and fulfilment of all human rights for all;

(c) To form, join, interact with, and participate in organizations, virtual networks, or in groups, on the regional and international levels, for the purpose of advocating and influencing policy decisions and outcomes that affect them, and of monitoring compliance by States with their international human rights obligations, and non-State international actors with their responsibilities and ethics of conduct.

(d) To seek redress before national and international human rights mechanisms, where failure by States to fulfil their commitments made at the regional and international levels, results in deprivation and/or violations of human rights.

Article 8

1. International cooperation among States is an integral part of the right to international solidarity, as a complement to the primary responsibility of each State to implement their national human rights obligations, with the effective and immediate fulfilment of core obligations as a priority, while at the same time taking concrete, deliberate and targeted steps with the maximum of available resources, to move expeditiously towards the progressive realization of human rights, including the right to development.

2. The duty of international cooperation rests on the premise that some members of the international community may not possess the resources necessary for the full realization of rights set forth in international human rights treaties, and that States in a position to do so should provide international assistance, acting separately and jointly, to contribute to the fulfilment of human rights in other States, in a manner consistent with the fundamental principles of international human rights law: non-discrimination and equality including gender equality, participation, transparency and accountability.

Article 9

The right to international solidarity entails a human rights based approach to international cooperation and all global partnerships in responding to global challenges such as those relating to global governance, regulation and sustainability in the fields of climate change, the environment, humanitarian assistance, trade, finance, taxation, debt relief, human trafficking, dumping of toxic wastes, social protection, universal health coverage, reproductive and sexual health, food security, water management, renewable energy resources, social standards, migration and labour, and strengthening participatory

global governance in order to address structural inequalities such as gender inequality, and in creating a global enabling environment for a people-centred development.

Article 10

1. The right to international solidarity requires that international cooperation should be based on equal partnerships, mutual commitments and obligations, including mutual accountability enhanced through transparency in the use of development resources obtained through international cooperation, and joint assessment of mutual progress.

2. The right to international solidarity in international cooperation, holds partner States accountable to each other and to their respective constituents at the national level, for the outcomes of policies, strategies and performance at the bilateral, regional and international level, which should reflect the best interests of their peoples.

Article 11

1. States should strive for the fulfilment of the right to peace, for friendly relations and cooperation with each other, irrespective of differences in their cultural, social, economic and political systems and for the peaceful settlement of international disputes without resorting to or threatening the use of force.

2. The right to international solidarity holds inviolable the right of each State and peoples to determine freely their own objectives of social development, to set their own priorities and to decide, in conformity with the principles of the Charter of the United Nations, the means and methods of their achievement without any external interference.

3. In light of the common challenges of humankind in the contemporary world, the right to international solidarity requires States to act with common but differentiated responsibilities, taking into account their historical advantages and contributions to the challenges facing humanity.

Article 12

1. In the elaboration and implementation of international agreements and related standards, States must ensure that the procedures and outcomes are fully compliant with their human rights obligations, including those relating to international trade, investment, finance, taxation, environmental protection, development cooperation, and security, with a view to creating an international enabling environment conducive to the universal fulfillment of human rights.

2. As a member of an international organization, the State continues to be responsible for its own conduct in relation to its human rights obligations within and outside its territory, and therefore should ensure that the relevant international organization acts consistently with the State's international human rights obligations[12] including its extraterritorial obligations.

3. It is the responsibility of States to cooperate in creating mechanisms on the national, regional and international levels, to hold accountable all relevant actors – State and non-

[12] Committee on Economic, Social and Cultural Rights. (2000) General Comment No. 14: the right to the highest attainable standard of health. E/C.12/2000/4.

State entities alike – for their actions or inactions that have an impact on the full exercise and enjoyment of human rights and fundamental freedoms.

Article 13

1. States should respect and protect *inter alia*, the rich variety and diversity in the cultures of peoples and individuals who make up international society and the reciprocal influences they exert on one another, their right to participate in decision-making from the local to the international levels, their access to communication and free exchange of information without unnecessary restrictions, and the privacy of the individual.

2. States should ensure that there is a balanced gender representation in States' delegations to diplomatic and international decision-making forums, on all issues and levels, and not just on women's rights.

3. States should cooperate jointly, to address the intersection of gender based discrimination, poverty, socio-economic marginalization and violence, as well as the links among trafficking in human beings, corruption, terrorism, militarism, trade in small arms, and gender-based violence, and devote sustained and consistent attention to the issue of women and girls in all situations of vulnerability and multiple forms of discrimination who are particularly at risk of gender-based violence.

4. The right to international solidarity requires that States engaged in actions of international cooperation should refrain from imposing conditions that would hinder the exercise and enjoyment by peoples and individuals of their human rights.

5. States should respect, protect and promote good practices of peaceful and productive collective action – whether among individuals, peoples or among States – that give rise to desirable outcomes in advancing all human rights and fundamental freedoms for all.

6. States should respect and protect the right of peoples and individuals exercise their right to seek, obtain, receive and impart to others, information about the right to international solidarity, including through giving effect to this right in domestic and international legislative, judicial or administrative systems;

7. States should respect, protect and ensure the right of peoples and individuals to access remedies and redress through national and international human rights mechanisms, when the failure of States to fulfil their commitments made at the regional and international levels, results in deprivation and violations of human rights.

8. The right to international solidarity imposes on States particular negative obligations required by applicable international human rights instruments including:

(a) Not adopting free trade agreements that would undermine peoples' livelihoods or other rights;

(b) Not increasing or contributing to global warming;

(c) Not causing the depletion of or irreparable damage to natural resources;

(d) Not engaging in irregular weapons trading; and

(e) Not impeding access to information and communications technology.